

MEMO ENDORSED

Katherine Polk Failla
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Uniformed Fire Officers Association et al v. DeBlasio et al,*
No. 20-cv-5441 (KPF) (S.D.N.Y.)

Wednesday, August 12, 2020

Dear Judge Failla,

This is Towaki Komatsu. Docket number 65 in the case referenced above confirms that I filed a letter motion dated 7/31/20 in it on 8/3/20 for authorization for permissive intervention in it or to appear as an amicus curiae in it. In the 9 days since that submission was processed, there has been no response from your side in regards to that. By contrast, docket 64 in that case confirms that you responded to an application that was submitted in it on 7/29/20 on behalf of a group that sought to also intervene in it. The fact that you responded to that application within 2 days after it was filed in that case, but haven't responded to my application to intervene in it is a clear violation of my Fourteenth Amendment due process and equal protection rights as well as my First Amendment right of access to the courts that you need to immediately rectify.

I'm also aware that docket number 102 in that case confirms that another group submitted an application to appear as an amicus curiae in that case following my 8/3/20 letter motion in this case. In the event that you issue a determination in response to that group's application before you issue a determination in response to my 8/3/20 submission, that will further violate my Fourteenth Amendment and First Amendment rights while also serving as sufficient grounds for a sign to be removed from the first floor of the Thurgood Marshall federal courthouse that shows

the Bill of Rights on it.

From,

Towaki Komatsu

s_/Towaki Komatsu

802 Fairmount Pl., Apt. 4B
Bronx, NY 10460

Tel: 347-872-1205

E-mail: Towaki_Komatsu@yahoo.com

A copy of this Order was mailed by Chambers to:

Towaki Komatsu
802 Fairmont Pl., Apt 4B
Bronx, NY 10460

The Court is in receipt of the above letter from proposed intervenor-Towaki Komatsu. (Dkt. #106). Mr. Komatsu filed a letter motion, which was received by the Court on August 3, 2020, seeking permissive intervention in this lawsuit, or in the alternative to appear as amicus. (Dkt. #65). The Court's failure to respond to Mr. Komatsu's motion after 10 days violates neither his Fourteenth Amendment nor First Amendment rights.

Rule 24(b) of the Federal Rules of Civil Procedure allows a court to exercise its discretion and permit intervention under certain circumstances. It provides in pertinent part that "[o]n timely motion, the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B); *Police & Fire Ret. Sys. of City of Detroit v. IndyMac MBS, Inc.*, 721 F.3d 95, 103 n.7 (2d Cir. 2013). In exercising its discretion, the court must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, ... the nature and extent of the intervenors' interests, the degree to which those interests are adequately represented by other parties, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Citizens Against Casino Gambling in Erie Cty. v. Hogen*, 417 F. App'x 49, 50 (2d Cir. 2011) (summary order) (quoting *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986)). Permissive intervention is wholly within the court's discretion. See *St. John's Univ., N.Y. v. Bolton*, 450 F. App'x 81, 84 (2d Cir. 2011) (summary order) ("A district court has broad discretion under Rule 24(b) to determine whether to permit intervention[.]").

Mr. Komatsu claims he has a right to intervene because: (i) he experienced a retaliatory criminal prosecution for defending himself against members of the NYPD; (ii) he provided testimony before the City Council against the CCRB and NYPD, which was recorded; and (iii) his Constitutional rights were violated when he attended a proceeding at City Hall on March 18, 2019. (See Dkt. #65). Mr. Komatsu does not meet the requirements for intervention as of right under Rule 24(a) because he fails to show that he has a legally cognizable interest in the subject matter of the pending action. The pending action is specifically about the personnel records of law enforcement personnel, including police officers, which have become accessible to the public by virtue of the repeal of New York Civil Rights Law § 50-a. Mr. Komatsu's motion does not present any common question of law or fact with the above captioned action, the Court declines to exercise its discretion to permit intervention under Rule 24(b).

To the extent that Mr. Komatsu would like to file an amicus brief on the timeline set out by the Court for the parties, due **August 14, 2020**, he may do so.



Dated: August 13, 2020
New York, New York

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE